

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

ROBERT OSHINSKY
10603 Pine Haven Terrace
Rockville, Maryland 20852

Case No. 494-O

Complainant,

vs.

TIMBERLAWN SOUTH/TUCKERMAN
WALK HOMEOWNERS' ASSOCIATION
c/o MTM Management Associates
P.O. Box 506
Damascus, Maryland 20872

Respondents.

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on April 11, 2001, pursuant to sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code 1984 as amended, and the duly appointed hearing panel having considered the testimony and evidence of record, finds, determines and orders as follows:

BACKGROUND

1. The Complainant, Robert Oshinsky, is a resident of 10603 Pine Haven Terrace, Rockville, Maryland 20852. He is a member of the Timberlawn South/Tuckerman Walk HOA. Mr. Oshinsky lives on Pine Haven Terrace. There are 69 units and 139 parking spaces on the Pine Haven Terrace portion of the Timberlawn

South/Tuckerman Walk HOA (hereinafter "Timberlawn") common area. Since 1996 Timberlawn's parking policy has allowed up to two parking permits per unit.

2. The parking policy of Timberlawn provides that vehicles without the displayed permits are subject to tow between the hours of 12:00 midnight and 6:00 a.m.
3. Mr. Oshinsky asserts that the governing documents in Article II entitle each unit owner the right of enjoyment in the common areas to include having open parking spaces on Pine Haven Terrace available to unit owners at any hour of the day or night.
4. Mr. Oshinsky contends that unit owners such as himself have been denied the protection of the governing documents because vehicles without permits frequently use and occupy the parking spaces on Pine Haven Terrace that should be available to unit owners and at times require unit owners to use the public street to park.
5. Mr. Oshinsky requests the Commission to have Timberlawn assign designated parking spaces to unit owners and to more effectively implement the towing policy to extend the hours beginning at 6:00 p.m. in the evening.

FINDINGS OF FACT

1. There are more parking places in the HOA's common area parking lots than there are parking permits issued.
2. Timberlawn does not have and never has adopted a parking policy assigning specific parking spaces to units or unit owners.

3. The Board of Directors has considered various proposals made by unit owners since 1996 to amend the restrictions on parking within the common areas of the HOA as well as to enlarge the "towing times."
4. On all such occasions, the Board of Directors, in exercising its authority and power, has declined to amend or change the parking and permit policy that has been effective since 1996.
5. On various occasions, such as when unit owners have held social functions or entertained guests - such as birthday parties and social gatherings during the holiday celebrations - there have been no parking spaces available for unit owners to park, making it necessary for the unit owner to park temporarily on the public street.
6. The public street is within a block and a half of the Association parking facility.
7. On a few select occasions unit owners have been inconvenienced where snow has been cleared by a unit owner near his or her residence only to subsequently find another car parked in the cleared space.
8. Administrative Resolution #0196 adopted July 15, 1996, emphasizes to unit owners that Valerian Lane is a county road on which visitors and guests may park and that unit owners are encouraged to instruct guests and visitors to park on the north side of Valerian Lane.
9. After 1996, The Board of Directors submitted alternative plans and proposals to the community on the issue of considering the adoption of different towing hours of vehicles found without parking permits.

10. In conjunction with this, the Board of Directors listened to public comments and reviewed surveys that had been submitted to the homeowners.
11. During the calendar year 2000, the Board of Directors held an open discussion on the parking issue and in March 2000 and again in July 2000 the Board agreed to submit alternative parking proposals to the community for feedback as to the possibility of assigning one parking space per each non-garaged unit. In May 2000 the Board of Directors voted not to change the current parking policy and specifically voted 4 to 2 against changing towing times. Also, upon receipt of community response following the July 2000 proposal, the Board determined the current policy was satisfactory and no change to the parking policy was necessary.¹
12. Thereafter, the Board passed a resolution to maintain the "status quo" for parking as established by the present rules and regulations, finding that these rules and regulations were working well for the community and should not be changed for the convenience of a single person.
13. Respondent's evidence, as reported in logs kept by various homeowners, reflected at various times the number of open spaces available to park a vehicle in the common areas of the homeowner association, which varied from a low of six to a high of

¹At the Board meeting on November 13, 2000, further discussion was held in general session referencing the July Board meeting where Mr. Oshinsky, the president of the Board, reported he was in receipt of a letter from a lawyer about a resident complaining about being unable to find an open parking space upon the resident's return from work. The Board was asked the identity of the complaining resident. After discussion, Mr. Oshinsky revealed that he was the resident who had complained and arranged for the lawyer to write the letter to the Board.

eighteen in the block where Mr. Oshinsky resides. Moreover, the statistical information provided by the Respondent shows that the patrol for illegally parked vehicles and the towing incidents of vehicles without permits has decreased rather than increased since 1999.

14. The Panel finds that the preponderance of the evidence supports a finding of fact that the Board's resolution was not arbitrary or capricious.

CONCLUSIONS OF LAW

1. The Declaration of Covenants, Conditions and Restrictions for Timberlawn South/Tuckerman Walk Homeowner Association were duly recorded in the land records of Montgomery County, Maryland.
2. Article IV, section 1, of the Declaration provides that the affairs of the Association are to be managed by the Board of Directors.
3. Article VII, section 1(a), of the By-Laws gives the Board of Directors the powers to adopt and publish rules and regulation governing the use of the common areas and facilities of the homeowner association.
4. Absent an affirmative finding, based upon all of the evidence, that the Board of Directors acted in bad faith or with fraudulent intent, a Board of Directors' business judgment regarding the matters within their scope and authority is not subject to intervention by the courts or other quasi-judicial agencies. Black vs. Fox Hills North Community Association, Inc. 599 A.2d 1228, 90 Md.App. 75, 1992.

5. Administrative resolution # 0196 adopted on July 15, 1996, effective September 1, 1996, was properly enacted and adopted pursuant to the authority of Respondent's Board of Directors.
6. Neither Article II, section 1, of the Declaration of Covenants and Restrictions nor any other article of the Declaration empowers a unit owner to individually or unilaterally declare a properly adopted rule or regulation of the Board of Directors to be invalid without affirmative proof that the rule or regulation failed to satisfy the statutory and procedural prerequisites for its adoption.
7. At no time did the Board of Directors ever establish a reserve assigned parking policy whereby a specifically identified parking place would be specifically assigned to a unit owner and/or unit of the homeowner association.
8. Absent a specifically adopted policy assigning reserved parking places to individual unit owners, the parking policy as enunciated in administrative resolution # 0196 since 1996 is enforceable and binding on unit owners.
9. The administrative parking policy called into question by the Complainant is found to be uniform in its application and reasonable in its effect.

ORDER

In view of the foregoing, and based upon the record in this case, the testimony provided by the Complainant and the Respondent and their witnesses, as well as any exhibits accepted into evidence during the hearing, it is this 25th day of *July*, 2001, by the Commission on Common Ownership Communities, ORDERED:

1. That the Complainant's requested relief, namely, that the Board either reserve one space for each unit or change the towing start times to 6:00 p.m. is hereby denied;
2. That any party aggrieved by the action of this Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within 30 days from the date of this Order, pursuant to the Maryland Rules of Procedure.

The foregoing was concurred in by panel members Clara Perlingiero and Michael Maloney.

By: 
William John Hickey
Panel Chairperson, Commission on Common
Ownership Communities